

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EDDIE BRADLEY)	
Claimant)	
VS.)	
)	Docket No. 208,427
ST. FRANCIS REGIONAL MEDICAL CENTER)	
Respondent)	
Self-Insured)	

ORDER

Claimant appealed Administrative Law Judge John D. Clark's September 16, 1998, Award. The Appeals Board heard oral argument on March 24, 1999.

APPEARANCES

Claimant appeared by his attorney, Thomas M. Warner, Jr., of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge limited claimant to a permanent partial general disability award of 15 percent based on claimant's permanent impairment of function. The Administrative Law Judge found claimant was not entitled to a work disability because respondent had offered claimant a job within his permanent restrictions and claimant refused to even attempt the job.

The claimant contends respondent did not offer him a job within his permanent restrictions. Thus, claimant argues he is entitled to a substantial work disability award. Further, if the Appeals Board finds claimant failed to make a good faith effort in attempting to find appropriate employment, then claimant remains entitled to a work disability award by imputing a post-injury wage to the claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board concludes the Administrative Law Judge's Award should be affirmed. The record as a whole supports the conclusion that respondent requested claimant to interview for two jobs located in respondent's Food and Nutrition Services department. The job duties required to perform those two jobs were within the permanent restrictions imposed by claimant's treating physician, Jacob Amrani, M.D. The most creditable and persuasive evidence proves, if claimant would have interviewed for those jobs, he would have been transferred to one of the jobs at a comparable wage. Accordingly, a comparable wage should be imputed to the claimant and any permanent partial general disability award is limited to his permanent functional impairment. See K.S.A. 44-510e(a).

An employee who is capable of performing work within his permanent restrictions must, at a minimum, attempt to do such work. A mere refusal to work is insufficient to allow an employee to circumvent the provisions of K.S.A. 44-510e(a).¹

Furthermore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions of law as its own that are not inconsistent with the findings and conclusions set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's September 16, 1998, Award, should be, and is hereby, affirmed.

¹See Lowmaster v. Modine Mfg, Inc., 25 Kan. App. 2d 215, Syl. ¶¶ 3,4, 962 P.2d 1100, *rev. denied* ____ Kan. ____ (1998); Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 320, 944 P.2d 179 (1997); Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 283, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995).

The Appeals Board approves and adopts all the remaining orders set forth in the award.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Thomas M. Warner, Jr., Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director